

REFERENCE TITLE: **juvenile hearings; jury trials**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2559

Introduced by
Representatives Anderson, Aguirre A, Chase, Hershberger, Knaperek, Senator
Blendu: Representatives Allen J, Barnes, Bradley, Burns J, Gray C,
Kirkpatrick, Lopez L, McComish, Nichols, Rosati, Stump, Yarbrough

AN ACT

AMENDING SECTION 8-223, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 8-225 AND 8-226; AMENDING SECTION 8-535, ARIZONA REVISED STATUTES; AMENDING LAWS 2003, SECOND SPECIAL SESSION, CHAPTER 6, SECTION 45; MAKING APPROPRIATIONS; RELATING TO JUVENILE HEARINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-223, Arizona Revised Statutes, is amended to
3 read:

4 8-223. Jury trials; change of judge

5 A. A hearing to terminate parental rights that is held pursuant to
6 section 8-537 or 8-863 shall be tried to a jury if a jury is requested by a
7 parent, guardian or custodian whose rights are sought to be terminated.

8 B. IN ANY COUNTY WITH A POPULATION OF AT LEAST FIVE HUNDRED THOUSAND
9 PERSONS, THE PARENT, GUARDIAN OR CUSTODIAN WHOSE RIGHTS ARE SOUGHT TO BE
10 TERMINATED MAY REQUEST A CHANGE OF JUDGE IF THAT PERSON DID NOT REQUEST A
11 JURY TRIAL AND THE JUDGE ASSIGNED TO THE CASE IS THE SAME JUDGE WHO HEARD THE
12 DEPENDENCY CASE. THE COURT SHALL NOT GRANT MORE THAN ONE REQUEST PURSUANT TO
13 THIS SUBSECTION.

14 Sec. 2. Title 8, chapter 2, article 2, Arizona Revised Statutes, is
15 amended by adding sections 8-225 and 8-226, to read:

16 8-225. Parental rights; hearings; decision

17 THE COURT MUST ISSUE A DECISION WITHIN THIRTY DAYS AFTER IT HOLDS A
18 HEARING TO TERMINATE PARENTAL RIGHTS PURSUANT TO SECTION 8-537 OR 8-863.

19 8-226. Permanency mediation program

20 A. SUBJECT TO LEGISLATIVE APPROPRIATION, THE ADMINISTRATIVE OFFICE OF
21 THE COURTS SHALL ESTABLISH A PERMANENCY MEDIATION PROGRAM IN THE JUVENILE
22 COURT TO PROVIDE NONADVERSARIAL DISPUTE RESOLUTION ALTERNATIVES AND TO
23 PROMOTE PERMANENCY FOR DEPENDENT CHILDREN. THE PROGRAM SHALL ALLOW THE COURT
24 TO EMPLOY MEDIATORS OR TO CONTRACT FOR MEDIATION SERVICES TO FACILITATE
25 ALTERNATIVE DISPUTE RESOLUTION ACTIVITIES.

26 B. THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL PRESCRIBE THE FORMULA
27 FOR DISTRIBUTING MONIES APPROPRIATED FOR THE PROGRAM TO EACH COUNTY JUVENILE
28 COURT BASED ON THE NUMBER OF DEPENDENCY PETITIONS FILED IN EACH COURT IN THE
29 PREVIOUS YEAR.

30 Sec. 3. Section 8-535, Arizona Revised Statutes, is amended to read:

31 8-535. Notice of initial hearing; waiver; guardian ad litem

32 A. After the petition has been filed, the clerk of the superior court
33 shall set a time and place for the initial hearing. Notice of the initial
34 hearing and a copy of the petition shall be given to the parents of the
35 child, the guardian of the person of the child, the person having legal
36 custody of the child, any individual standing in loco parentis to the child,
37 the tribe of any Indian child as defined by the federal Indian child welfare
38 act of 1978 (25 United States Code section 1903) and the guardian ad litem of
39 any party as provided for service of process in civil actions. In addition
40 to the service of process requirements in civil actions, any parent, any
41 Indian custodian and the tribe of an Indian child shall be notified of the
42 initial hearing by registered mail, return receipt requested, as required by
43 the federal Indian child welfare act of 1978 (25 United States Code section
44 1912). The notice required by this subsection shall include the following
45 statement:

1 You have a right to appear as a party in this proceeding. The
2 failure of a parent to appear at the initial hearing, the
3 pretrial conference, the status conference or the termination
4 adjudication hearing may result in an adjudication terminating
5 the parent-child relationship of that parent.

6 B. The initial hearing shall take place no sooner than ten days after
7 the completion of service of notice.

8 C. Notice and appearance may be waived by a parent before the court or
9 in writing and attested to by two or more credible witnesses who are eighteen
10 or more years of age subscribing their names thereto in the presence of the
11 person executing the waiver or shall be duly acknowledged before an officer
12 authorized to take acknowledgements by the person signing the waiver of
13 notice and appearance. The face of the waiver shall contain language
14 explaining the meaning and consequences of the waiver and the termination of
15 parental rights. The parent who has executed such a waiver shall not be
16 required to appear.

17 D. If a parent does not appear at the initial hearing, the court,
18 after determining that the parent has been served with proper legal notice,
19 may find that the parent has waived the parent's legal rights and is deemed
20 to have admitted the allegations of the petition by the failure to appear.
21 The court may terminate the parent-child relationship as to a parent who does
22 not appear based on the record and evidence presented as provided in rules
23 prescribed by the supreme court.

24 E. At the initial hearing, the court shall:

25 1. Schedule a ~~pretrial conference or status~~ conference.

26 2. ORDER MEDIATION AND SET A DATE FOR THE MEDIATION.

27 ~~2.~~ 3. Schedule the termination adjudication hearing.

28 ~~3.~~ 4. Instruct the parent that the failure to appear at the pretrial
29 conference, status conference or termination adjudication hearing may result
30 in an adjudication terminating the parent-child relationship as to a parent
31 who does not appear.

32 F. On the motion of any party or on its own motion, the court shall
33 appoint a guardian ad litem if it determines that there are reasonable
34 grounds to believe that a party to the proceeding is mentally incompetent or
35 is otherwise in need of a guardian ad litem.

36 G. The county attorney, on the request of the court or a governmental
37 agency or on the county attorney's own motion, may intervene in any
38 proceedings under this article to represent the interest of the child.

39 Sec. 4. Laws 2003, second special session, chapter 6, section 45 is
40 amended to read:

41 Sec. 45. Delayed repeal

42 Section 8-223, Arizona Revised Statutes, as added by this act, is
43 repealed from and after December 31, ~~2006~~ 2009.

1 Sec. 5. Effective dates

2 A. Notwithstanding Laws 2003, second special session, chapter 6,
3 section 10, section 8-537, Arizona Revised Statutes, as amended by Laws 2003,
4 second special session, chapter 6, section 10, is effective from and after
5 December 31, 2009.

6 B. Notwithstanding Laws 2003, second special session, chapter 6,
7 section 33, section 8-863, Arizona Revised Statutes, as amended by Laws 2003,
8 second special session, chapter 6, section 33, is effective from and after
9 December 31, 2009.

10 Sec. 6. Appropriation; permanency mediation program; exemption

11 A. The sum of \$525,000 is appropriated from the state general fund in
12 fiscal year 2006-2007 to the administrative office of the courts for the
13 permanency mediation program established pursuant to this act.

14 B. The appropriation made in subsection A of this section is exempt
15 from the provisions of section 35-190, Arizona Revised Statutes, relating to
16 lapsing of appropriations.

17 Sec. 7. Appropriation; jury trials; exemption

18 A. The sum of \$754,700 for 11 FTE positions is appropriated from the
19 state general fund in fiscal year 2006-2007 to the department of economic
20 security for the attorney general to address workload associated with jury
21 trials for the termination of parental rights.

22 B. The appropriation made in subsection A of this section is exempt
23 from the provisions of section 35-190, Arizona Revised Statutes, relating to
24 lapsing of appropriations.